IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1541 OF 2005

Selina P. Shah Petitioner

vs.

The Principal,
Mithibai College of Arts, & ors. Respondents

Mr.Mihir Desai for the petitioner.

Mr.R.A.Rodrigues with Mr.Rahul Nerlekar for respondents 1 & 2.

Ms.Mugdha Jadhav for respondents 4 & 5.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 10th November, 2006

P.C.

By consent heard forthwith.

2. The petitioner was a Lecturer in Microbiology with respondent no.1-College-a Minority Educational Institution. Respondent no.2 is a Trust who manage the said college. Respondent no.3 is the University of Mumbai. Respondent no.4 is the Joint Director of Higher Education. Respondent NO.5 is the State of Maharashtra which has supervisory powers over Higher Education Institutions.

3. By this petition, after an order of termination dated 27th October, 2004, the petitioner has restricted her prayers in this petition as under:

a) that this Hon'ble Court be pleased to issue a writ of Mandamus, or a writ, order or direction in the nature of Mandamus directing the Respondent Nos. 4 and 5 to grant approval to the petitioner and

(i) to pay the Respondent no.2 full wages in respect of the petitioner for the period from June 2001 to 26th October, 2004.

(ii) to pay full wages to the petitioner from 27th October, 2004 onwards."

4. The petitioner was appointed on 23rd July 1999 on adhoc basis until NOC was received from the Director of Education, Pune. Respondent no.3 had approved the said appointment. The petitioner continued to hold the post from 1999 to 2000 to 2003-2004. Thereafter her services were terminated by letter dated 10th March 2004 with effect from 10th April 2004. The reason for termination basically was the Government Circulars dated 1st April 1999 and 7th May 1999 whereby, a NOC is required for all such appointments as insisted by respondent no.4. A writ petition no.2545/1999 is pending in this Court, by which the Maharashtra Association of Minority Educational Institutions including concerned respondents-College /Management, have challenged the said circulars. By an order dated 4th May 2000 a Division Bench of this Court has stayed both the aforesaid circulars pending the final disposal of the petition. The said interim order has been in operation since then and which reads thus:

"1. Heard learned counsel for the parties.

2. Notice of motion is made absolute in terms of prayer clause (a)(i) and (ii) which reads thus:

(a) That pending the hearing and final disposal of the Writ Petition, this Hon'ble Court be pleased-

(i) to stay the Circulars dated 1st April 1999 and 7th May 1999 insofar as the Minority Educational Institutions and the members of the Petitioner association as listed in Exhibit-A to the petition are concerned.

(ii) to restrain the Respondents from in any manner applying the Circulars dated 1st April 1999 and 7th May 1999 to the members of the petitioner Association and the educational institutions run by them as listed in Exhibit-A to the Petition and/or from taking any steps whatsoever against those educational institutions of any nature whatsoever by virtue of the said circulars."

5. The petitioner, therefore, by this writ petition contended that the NOC as contemplated in those circulars, now in view of the ad-interim order, cannot be the basis for not granting approval to the petitioner's appointment by respondents 4 and 5. The respondents had not approved the petitioner's appointment in view of the above circulars and terminated her services.

6. The petitioner has challenged the order of termination in Writ Petition No.3177/2004 which is pending.

7. As the prayer is restricted, as reproduced above, we are disposing of the present writ petition accordingly without observing anything on the merits of the writ petitions.

8. Based upon the circulars the respondents insisted for a NOC from the Education Department. Though the petition is pending, but in view of the ad-interim orders as referred above, and as the effect and operation of the said circulars have been stayed, there is no reason why the petitioner was not entitled for grant of approval as prayed, from time to time, by the management-respondent no.2.

9. Taking all into account as there is no dispute about the said ad-interim order and on the facts and circumstances of the case, the petition is partly allowed in the following terms:

> . Respondents 4 and 5 are directed to pay respondent no.2, full wages in respect of the petitioner for the period from June 2001 to 26th October 2004. However, this payment shall be subject to the final decisions of Writ Petition no.2545/1999 and W.P.No.3177/2004."

. There shall be no order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)